IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO.3600 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. Vasant Shelke i/b M/s Divekar & Co. for the petitioners.

Mrs. Snehal Modi for respondents.

CORAM : ANOOP V. MOHTA, J.

DATE : 28.11.2005

. By the present writ petition, the petitioners have challenged the order dated 23rd November, 2005 passed by the Small Causes Court, at Bombay (Appellate Side), whereby the appeal filed by the petitioner was dismissed for non compliance of the order passed on 3rd November, 2004, under order 39 Rule 11 of Code of Civil Procedure.

2. Heard the learned advocates

appearing for the parties. By an order dated 3rd November, 2004, the appellants were directed to carry out the amendment within two weeks. The matter was adjourned to 18th December, 2004. Due to Diwali vacation the petitioner could not carry out the amendment. The application was filed on 15/1/2004 to extend the time to carry out the amendment. That application was adjourned for order. However, the learned Judge issued show cause notice in question for dismissal of the suit. After considering the submission made by the petitioners the Court Come to the conclusion that it is undisputed position that the appeal in question was against the order of eviction between the parties. therefore, the learned Counsel appearing for the respondents contended that this is nothing but the delaying tactics of the petitioners to postpone the eviction order which was passed on 27/11/2002. There is some substance in this

submissions. However, considering the fact that the rights of the parties cannot be disposed of in such a fashion for want of not carrying out the amendment within two weeks, as provided.

3. Order 39 Rule 11 has different aspect as well as facet which has to be taken note of. Merely because parties failed to carry out amendment within 15 days as ordered that itself cannot be the ground for dismissal of the appeal by applying the provisions of order 39 Rule (1) (Maharashtra Amendment) C.P.C. Considering the merits of this matter, I am of the view that the case is made out by the petitioners to consider their case on merit. The petition therefore, is allowed. The appellants/petitioners to carry out the amendment within one week. The Appeal No.252 of 2003 is restored. The order dated 23/2/2005, thus accordingly quashed and set aside. The parties are directed to appear before the

Appellate Bench on 7th December, 2005. The Appellate Bench thereafter fix the matter for hearing. The appeal be heard expeditiously. This order is subject to cost of Rs. 2000/- to be paid within two weeks. Writ petition is disposed of. Interim order grated by this Court dated 24/11/2005 to continue till 8th December, 2005.

(ANOOP V.MOHTA,J.]